IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

TEXAS ALLIANCE FOR RETIRED
AMERICANS; SYLVIA BRUNI; DSCC; and
DCCC,

     Plaintiffs,

     v.

RUTH R. HUGHS, in her official capacity as
the Texas Secretary of State,

     Defendant.

CIVIL ACTION NO. 5:20-cv-128

SECOND DECLARATION OF BRUCE SHERBET
COLLIN COUNTY ELECTIONS ADMINISTRATOR

I, Bruce Sherbet, pursuant to 28 U.S.C. § 1746, testify that:

1. My name is Bruce Sherbet, and I currently serve as the Elections Administrator in Collin County, Texas. I began my service in Collin County in December 2015. Prior to starting with Collin County, I served as the Dallas County Elections Administrator for 24 years and spent another two years doing the same work for Ellis County. All in all, I began working with elections when I was 19, almost 38 years ago.

2. My experience gives me substantial insight into the technology and procedures of Texas elections as well as subject matter expertise as to the various complexities of conducting elections in Texas.

3. I understand that the constitutionality of HB 25—repealing the availability of the "one-punch" straight ticket voting ("STV") option—has been challenged in Texas. I do not have any opinion as to whether HB 25 should or should not have been passed by the Texas Legislature. I am offering this declaration to provide the Court with facts as to how this legislation will affect the process to cast a ballot in Collin County and across Texas and how any changes now would affect the 2020 general election. My statements here are based on my experience and subject matter expertise in this field and my nearly four decades of observing conditions as they actually exist in Texas elections.

4. Making any change to the ballots now would be devastating to the administration of 2020 general election in Texas. November 3, 2020 is barely two months away. But that is not the only critical deadline. The election really has already begun. Paper ballots are already

being proofed to be printed. The order of the candidates is already programed into the electronic voting machines, and we are currently finalizing the 138 different ballot styles that are required in 239 precincts in Collin County alone. There is no way to now change the substance of the ballot without causing a massive disruption to the administration of the 2020 general election.

5. We began to prepare for 2020 general election months ago. Preparing the ballots requires setting the proper order of the races, candidates, and propositions for both printing paper ballots and programing into the electronic voting machines. After the results of the July 2020 primary runoffs, we knew the offices and most of the candidates who would be on the ballot. Significantly, the Texas Secretary of State is required to formally certify the candidates for inclusion on a ballot by the 67th day before the election. For the 2020 general election, the Secretary issued such a certification on August 28, 2020.

6. After that certification, we were able to finalize our ballots. We did so immediately and will be sending the final ballots to the printer on September 4, 2020. The printer will likely take 7 to 10 business days to get the 70,000 printed ballots back to us. We are required by law to mail ballots to overseas and military voters no later than 45 days before the election, which this year is September 19, 2020. At the same time, we also start mailing out ballots to voters in Texas who have already applied to vote by mail.

7. In short, the mail-in ballots for the November 2020 general election is nearly finalized and will be submitted for printing next week. In my view, I don't see how we reprogram and reprint the mail-in ballots to include the STV option in time to then send out those ballots to meet our statutory deadlines.

8. Likewise, changing the ballot now would create problems for in-person voting as well. It is by no means as simple as "flipping a switch" to include the STV option on Texas electronic voting machines.

9. Even before the Secretary of State formally certifies the candidates on the ballot, we work with the vendor of our voting machines to program the software to list the offices and other ballot items in the proper order. This is an iterative process the requires testing to ensure its accuracy. It usually takes us several weeks of going back and forth with the vendor to make sure that everything is running right and in the proper order. This process takes time because there is not one single ballot in Collin County. This year, we will have 138 different ballots for the various voters who live in this county. To test the accuracy of the software, we have to run every possible combination of votes on each individual ballot through the machines to ensure that they are marking and tallying the votes correctly. That means there at least 10,000 test ballots that have to run through our machines. We do two such tests, one internally to try to make sure everything is counting accurately, and then one that is open to the public for those interested to ensure the machines are working properly.

10. Requiring the STV option now would mean that we would have to reprogram each of those 138 different ballots, particularly because the STV option (when used) can only go at the front of the ballot. That means each race, proposition, and other ballot item on 138 different

ballots would have to shift positions. We would then have to re-run the tests as indicated above. Not only would such a reprograming put a strain on the staff of the Elections Department, it increases the potential for error given that the election is just weeks away. The Governor extended the early voting period for the upcoming election, meaning that in-person voting starts on October 13, 2020. There is simply not enough time to reprogram the voting machines and conduct enough testing to ensure the accuracy before in-person voting begins.
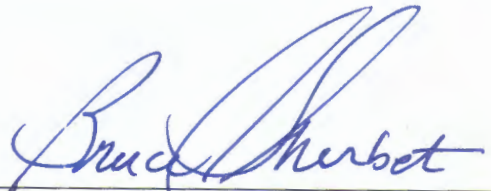
11. Based on decades of experience as a Texas election administrator, I can confidently say that other counties in Texas would face similar problems if there is a change to the ballot at such a late stage of the election process.

12. I understand that there is a question as to whether HB 25 will increase the amount of time it takes voters to complete their ballots. Making this determination requires an understanding the process of voting in Texas and the hardware and software used in Texas polling locations.

13. One of the most significant jobs of a county election official is to decide how many voting machines to place at each individual polling location. The locations themselves are decided by the body that governs the county, e.g., the County Commissioners Court in Collin County, in consultation with the county elections department staff. Once those locations are determined, the election official decides how many machines to place in which location. I make that decision based on analyzing turnout at various locations in prior elections and attempting to forecast turnout for the upcoming election. If one location had a particularly high volume of voters compared to the number of machines in a prior election, I will often make sure to add more machines in that location for the upcoming election. It is my understanding that other county election officials follow a similar process.

14. When a voter arrives at a polling location in Collin County, he or she first must check in and register before going to a voting machine. The voter then uses the machine to mark his or her votes, which results in a printed paper ballot once the voter is satisfied with his or her selections. That paper ballot is then scanned into a separate machine before the voter exits the polls. This is a similar process to that which occurs in all Texas counties that use electronic voting machines, although some do not require the separate scanning of paper ballots. That is determined by the type of voting machine in use by a particular county.

15. Collin County uses the Election Systems & Software ("ES&S") ExpressVote system. This system uses a touchscreen and lists each ballot item (e.g., individual races, bond measures, propositions) individually on its own page that shows up on the screen of the voting machine. The voter selects his or her choice on each ballot item by simply touching the box next to the desired vote and then touching the "Next" arrow to move to the next ballot item. Once the voter has made all of the desired votes, he or she can review those votes on the screen before printing out a paper copy of those selections. After review on the screen, the voter then prints a paper copy that again lists all of his or her selections. The voter can then review those selections again, and make changes if necessary, before scanning the paper ballot into a separate machine to cast his or her votes.

16. The ES&S ExpressVote system is used by many counties across Texas in addition to Collin County, including Bexar, Dallas, El Paso, Fort Bend, Williamson, and Webb counties. Travis County recently switched to the ES&S ExpressVote system in 2019, and it will be in use for the 2020 general election.

17. On the ES&S ExpressVote system—as well as all of the other electronic voting systems in use in Texas to my knowledge—marking the STV option does not allow voters to skip over any of the pages for any of the individual ballot items. The software used in Texas elections requires voters to "confirm" each of their individual choices for each partisan race even after marking the STV option on their ballot. That means when a voter selects the STV option, he or she is still required to go through every page of the ballot, race by race, to approve of the automatic STV selections and click "Next" to proceed to the next ballot item. Voters can, of course, change the selection for any of the individual contests. Thus, even with the use of the STV option, voters must still scroll through the entire ballot, page by page, at the voting machine in order to cast their ballot. As such, from the perspective of the voter standing at the voting machine, the repeal of the STV changes only whether a particular candidate is pre-selected on the individual pages related to partisan contests on the ballot.

18. Additionally, the STV option can and does cause voter confusion and frustration through what is called "emphasis voting." As stated above, even if a voter uses the STV option, he or she still has to go through each individual race before casting the ballot. Some voters will try to "emphasize" or "confirm" their vote for a particular candidate by touching the box next to the candidate's name on the page for that particular race. That will result in the candidate being *de-selected* by the voter. In other words, the STV option had already selected the candidate, and when the voter clicked on the selection to emphasize or confirm the choice, the voter inadvertently de-selected that candidate. On final review of their votes, voters think that their votes had been lost or changed. When this happens, the voters will then speak with election officials to go through various corrective procedures, which takes additional time. Thus, in some cases, the elimination of the STV option will serve to decrease voter confusion and the time to vote in certain circumstances.

19. Further, Collin County has upgraded its ES&S ExpressVote system software to allow multiple races to appear on each page of the voting machine. It's my understanding that multiple other counties are upgrading to the same software in advance of the 2020 general election.

20. Lastly, any discussion of voting wait times must consider the generous time allowed in Texas for early voting. For example, in Collin County, early voting is extremely popular. In 2018, 83% of voters who voted in-person did so during the early voting period, and only 17% of in-person voters voted on election day. Turnout during the early voting period follows a predicable pattern. A large number of voters vote on the first day of early voting and the last two days of early voting, but daily turnout decreases during the middle of the early voting period. This offers voters great flexibility in finding a convenient time to cast an early ballot without waiting in any line on election day. For the 2020 general election,

Governor Abbott extended by another week the early voting period, so it will now span three weeks and two weekends. Collin County will be encouraging voters to take advantage of the days in the early voting period with lower turnout.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September __1__, 2020.

Bruce Sherbet

Bruce Sherbet
Collin County Elections Administrator